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APPEAL FROM THE REVIEW BOARD OF THE  
DEPARTMENT OF WORKFORCE DEVELOPMENT  
The Honorable Howard B. Lytton, Jr., Chairperson  
George H. Baker, Member  
Sheri L. Clark, Member  
Cause No. 05-R-02127

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August 29, 2006

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

Case Summary and Issue

K. Scott Mapes appeals the Review Board of the Indiana Department of Workforce Development's (the "Board") order that affirmed the Administrative Law Judge's ("ALJ") decision denying him unemployment benefits. Mapes raises four issues for our review,<sup>1</sup> which we consolidate and restate as whether the ALJ properly concluded that Mapes was not entitled to unemployment benefits. Because Mapes voluntarily left his job without good cause, we affirm the decision of the Board.

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<sup>1</sup> The first three issues raised by Mapes essentially concern whether the ALJ properly concluded that he was not entitled to unemployment benefits. The fourth issue concerns whether Mapes' employer, Big C Lumber Company ("Big C Lumber"), "intentionally created a work environment in which any reasonable person would have resigned." Appellant's Brief at 1. Mapes has not made a cogent argument with regard to this issue or supported his argument with citation to authority. Therefore, this issue is waived. *See Doughty v. Review Bd. of the Dep't of Workforce Dev.*, 784 N.E.2d 524, 527 (Ind. Ct. App. 2003)(Appellant waived issue by failing to make a cogent argument and support his assertions by citation to authority); *see also* Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities . . .").

### Facts and Procedural History

Mapes was employed by Big C Lumber as a full-time truck driver. As a truck driver, Mapes' primary responsibility was to deliver Big C Lumber products to construction sites. Big C Lumber also expected its truck drivers to work in the lumberyard, where they were supposed to help load trucks for deliveries, help load customers' vehicles, and restack lumber.

In November of 2004, while unloading some materials at a construction site, Mapes cracked the customer's garage foundation. On January 25, 2005, while attempting a docking maneuver at Big C Lumber's lumberyard, Mapes caused a collision between his vehicle and another Big C Lumber truck. While making a delivery in late February of 2005, Mapes broke a mirror and tore a mud flap off of his truck.

On January 4, 2005, Mapes had a conversation with Kevin Zygmunt, the general manager at the Kendallville Big C Lumber store where Mapes worked. Zygmunt had heard from other employees and outside sources that Mapes had a bad attitude about his employment, and he asked Mapes about this. Mapes indicated that he had been unhappy with his job for several years. Zygmunt issued Mapes a verbal warning that same day, and instructed Mapes that if he had "problems with Big C Lumber policy or procedures that he should come to me or his immediate supervisor . . . to express concerns." Appellee's Appendix at 47. In February of 2005, Zygmunt again spoke with Mapes about a bumper sticker on Mapes' car that read "Disgruntled Employee of the Month." Transcript at 23-24. Zygmunt was concerned that customers might see the bumper sticker and about Mapes'

continuing attitude problem.

On March 2, 2005, Mapes approached his supervisor, James Vanderpool, and asked him why he had not been allowed to make any deliveries recently. Vanderpool informed Mapes that Big C Lumber did not want Mapes driving anymore, and that he was now to work in the lumberyard full-time. Mapes went to Zygmunt and spoke with him about this. Mapes testified that the conversation went as follows:

[W]hen I asked [Zygmunt], he said I think you're accident prone; you hit a foundation; had an accident in the yard; broke a mirror and a mud flap on the truck . . . . Um, think, besides you're not being taken off the road completely. You're going to be in the yard full-time as a backup driver. I don't have confidence in your abilities.

Id. at 8-9. After hearing this, Mapes gave Zygmunt two weeks notice of his intention to resign from his position. Zygmunt consulted with his superiors and later informed Mapes that Big C Lumber wanted him to leave that day, which Mapes did.

Mapes later applied for unemployment benefits. On March 30, 2005, a claims deputy for the Indiana Department of Workforce Development found that Mapes was eligible for benefits because he voluntarily left his employment with good cause. Big C Lumber appealed this decision, and a hearing was held before an ALJ on May 17, 2005. During the hearing, Mapes testified that he quit because he was uncomfortable with his job situation. Zygmunt testified that based on Mapes' recent accidents he "thought it was best for right now to have [Mapes] work in the yard and not drive as often as he was. I did not say he was not going to drive." Id. at 15. Zygmunt further explained that Mapes "was going to be continuing doing both [driving and working in the lumberyard] with the primary focus on the

yard keeping him off the road in case there was [sic] problems with safety or what have you with his driving ability.” Id. at 18.

On June 2, 2005, the ALJ issued an order that in relevant part provides:

FINDINGS OF FACT:

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[Mapes] felt that he was being picked on by [Zygmunt]. [Zygmunt] had asked him in January if [Mapes] was happy with his job, because he had heard from other employees that [Mapes] was complaining. He also asked [Mapes] about a bumper sticker on his vehicle which read “Disgruntled Employee of the Month.” [Mapes] had had several minor accidents, including damaging a mirror and mud flap while delivering a load, and an incident in November 2004 when [Mapes] dumped a load and it slid and cracked the garage foundation. There was a third incident when [Mapes] also hit another one of the employer’s trucks.

The employer decided to switch [Mapes] from primarily driving on the road to primarily driving in the yard. [Mapes’] job duties had always required him to drive both on the road and in the yard. However, [Mapes] would do more driving in the yard now and less on the road . . . . [Mapes] was offended by this and quit.

CONCLUSIONS OF LAW:

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In this case, the ALJ concludes that this is not a substantial change in [Mapes’] job duties. [Mapes’] basic job functions of driving remain the same. In the past, [Mapes] had driven both in the yard and on the road. [Mapes] would continue to drive both in the yard and on the road. Therefore, the ALJ concludes that this change was not a substantial and continuing change in circumstances. Therefore, the ALJ concludes that [Mapes] voluntarily left employment without good cause in connection with the work as defined by Chapter 15, Section 1 of the Act.

Appellee’s App. at 48-49. The ALJ ultimately reversed the claims deputy’s determination and held that Mapes was not eligible for unemployment benefits. Mapes appealed this decision to the Board. On July 22, 2005, the Board issued an order in which it adopted the ALJ’s findings of fact and conclusions of law, and affirmed the ALJ’s conclusion that Mapes

was not eligible for unemployment benefits. This appeal ensued.

### Discussion and Decision

Mapes argues that he is eligible for unemployment benefits. We disagree.

#### I. Standard of Review

Indiana Code section 22-4-17-12(a) provides that “[a]ny decision of the review board shall be conclusive and binding as to all questions of fact.” Review of the Board’s findings of fact is subject to a “substantial evidence” standard of review. McHugh v. Review Bd. of the Indiana Dep’t of Workforce Dev., 842 N.E.2d 436, 440 (Ind. Ct. App. 2006). “In this analysis, we neither reweigh the evidence nor assess the credibility of witnesses and consider only the evidence most favorable to the Board's findings. Reversal is warranted only if there is no substantial evidence to support the Board's findings.” Id. (citation omitted). We review conclusions of law to determine whether the Board correctly interpreted and applied the law. Id.

#### II. Good Cause

Pursuant to Indiana Code section 22-4-15-1(a), an unemployed claimant is ineligible for unemployment benefits if he has voluntarily left his most recent employment without good cause in connection with the work. The Board, by adopting the ALJ’s conclusions of law, concluded that Mapes was not eligible for unemployment benefits because he voluntarily left his job without good cause.

Mapes argues that the Board’s conclusion was erroneous because he left his job with good cause. He contends that Big C Lumber substantially changed his job duties when it

instructed him to work in the lumberyard rather than make deliveries, and that this gave him good cause to voluntarily quit his employment.

Initially, Big C Lumber argues that Mapes has waived this argument by not raising it at the hearing before the ALJ. Generally, a party waives appellate review of an issue or argument unless that party presented the issue or argument before the lower court. Nance v. Miami Sand & Gravel, LLC, 825 N.E.2d 826, 834 (Ind. Ct. App. 2005), trans. denied (quoting Dedelow v. Pucalik, 801 N.E.2d 178, 183 (Ind. Ct. App. 2003)). Waiver may be avoided if the lower court actually addressed the issue below in the absence of argument by the parties. Id. In her order, the ALJ specifically addressed whether there had been a substantial change to Mapes' job duties and whether this gave him good cause to voluntarily leave his employment. Therefore, this issue is not waived.

Nevertheless, Mapes' argument asks us to reweigh the evidence, which we will not do. Here, the record reveals that Big C Lumber employed Mapes as a truck driver. His primary responsibility was to make deliveries to construction sites. Big C Lumber, though, also required its truck drivers to work in the lumberyard preparing trucks for deliveries, loading customers' vehicles, and restacking lumber. While working as a truck driver, Mapes was involved in three relatively minor accidents. In November of 2004, while unloading some materials, Mapes cracked the foundation of a customer's garage. In January of 2005, Mapes caused a collision between his vehicle and another Big C Lumber truck, and in February of 2005, Mapes broke a mirror and tore a mud flap off his truck while making a delivery. Because of these accidents, Zygmunt determined that Mapes should primarily work

in the lumberyard while also acting as the back-up truck driver. Zygmunt informed Mapes that he would be driving less often. Although the focus of Mapes' job duties changed, the duties themselves did not. Mapes was still responsible for working in the lumberyard and driving trucks. Based on this, there was substantial evidence to support the ALJ's conclusion that Mapes' job duties did not substantially change.

Besides the change in his job duties, the only other reason Mapes gave for quitting his job was that he was uncomfortable with his job situation. In this instance, this alone does not constitute good cause for Mapes to voluntarily leave his employment. Therefore, the ALJ properly concluded that Mapes voluntarily left his employment without good cause in connection with the work, and thus, was ineligible for unemployment benefits.

#### Conclusion

Because Mapes' job duties did not substantially change, the ALJ properly concluded that Mapes voluntarily left his employment without good cause in connection with the work and was not eligible for unemployment benefits. The Board's order affirming the ALJ's conclusion that Mapes was ineligible for unemployment benefits is therefore affirmed.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.